IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case(Appeal) No.1206 of 2007 and
M.P.No.1 of 2007

Commissioner of Income Taqx
Chennai .. Appellant

-vs-

M/s EWS Finance and Investments Ltd.
Dhun Building, 827, Anna Salai
Chennai 600 002. ..Respondent

TAX CASE APPEAL filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Appellate Tribunal, Madras 'A' Bench, dated 29.12.2006 in ITA No.2441/Mds/2005. Preferred against the order of the Commissioner of Income Tax (Appeals) III Madras 34, ITA No. 30/2005-2006, dated 18.8.2005 and arising out of the assessment order of the Assistant Commissioner of Income Tax, Company Circle II (1) Chennai 34 dated 22.11.04 in PAN/GIR.No.AAACE/1989-Q for the Assessment year 2002-2003.

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T

(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN,J)

The questions of law formulated for admission of the tax case appeal are as follows:-

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that only 2% of the dividend amount should be treated as expenditure for earning the same, and leaving a disproportionate amount of interest to be treated as expenditure related to sale of shares?

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> 2. Whether in the facts and circumstances of the case, the Tribunal was right in fixing an arbitrary amount of 2% of expenditure as being towards earning exempted income, while the assessing officer had apportioned the expenditure in a scientific manner proportionate to the income earned?

2. The facts of the case culminated in the filing of the present appeal proceeds as follows:-

The assessee is an investment company which earned income from dividends amounting to Rs.4,38,19,097/-. The assessee claimed a sum of Rs.8,29,44,614/- in its books of accounts as expenditure on account of interest. The assessing officer disallowed proportionate interest attributable to the earning of exempt income, i.e., dividends amounting to Rs.8,19,98,194/- by adopting the formula investment made/total funds x total interest paid. Aggrieved by the assessment, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who partly allowed the appeal, directing that only 2% of the dividend amount should be treated as expenditure for earning the dividend. Aggrieved by that portion of the order, the Revenue took the matter on appeal to the Income Tax Appellate Tribunal, who upheld the order of the CIT (A) and dismissed the revenue's appeal. Aggrieved by the order of the Tribunal, the present appeal is filed.

3. The learned counsel for the Revenue submitted that the questions of law formulated is covered against the revenue by the decision of this Court dated 16.10.2006 made in T.C.No.1170 of 2006.

4. Recording the above submission made by the learned counsel for the Revenue and in view of the fact that in the above said tax case, the issue has been considered as follows:-

> "2. Learned counsel appearing for the revenue fairly submits that the first question of law is covered by a judgment of the Supreme Court reported in 237 ITR 889 (Uco Bank Vs. C.I.T) and the second question of law is covered by a judgment of this Court reported in 239 ITR 795 (C.I.T. Vs. Hotel Savera). Further, the Tribunal had also given a finding that the assessee had sufficient funds to make investment and therefore no interest can be allocated for earning dividend income. Hence, we do not find any infirmity or error in the order of the Tribunal and the same does not require any interference. Accordingly, the appeal stands dismissed".

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this present appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed.

rg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE ASST. REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL,
BENCH 'C', III FLOOR,
RAJAJI BHAVAN, BESANT NAGAR
MADRAS 90. (WITH RECORDS FIVE COPIES)

2. THE SECRETARY,
CENTRAL BOARD OF DIRECT TAXES,
NEW DEIHI (3 COPIES)

3. THE DY COMMISSIONER,
'A' BENCH, ITAT, CHENNAI.

4. THE ASST COMMISSIONER OF INCOME TAX,
COMPANY CIRCLE II (1), CHENNAI.

5. THE COMMISSIONER OF INCOME TAX,
(APPEALS) III, CHENNAI 34.

T.C(A)No.1206 of 2007

SJ(CO)
SR/1.11.2007

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